

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT L. WEBER,	§
	§ No. 624, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0802028202
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 4, 2009

Decided: January 14, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 14th day of January 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Robert L. Weber, filed an appeal from the Superior Court's October 13, 2009 order denying his motion for sentence modification pursuant to Superior Court Criminal Rule 35(b). The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's

judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) In June 2008, Weber pleaded guilty to Aggravated Harassment. He was sentenced to 2 years incarceration at Level V, to be suspended for 6 months at Level IV Home Confinement, to be followed by 18 months of Level III probation. In January 2009, Weber was found to have committed a violation of probation. He was re-sentenced to 2 years incarceration at Level V, to be suspended for 2 years Level III Gateway Program, and, upon successful completion of the Gateway Program, to be suspended for Level III probation. Weber's sentence later was modified to provide for a term of Level IV Home Confinement.

(3) In February 2009, Weber was found to have violated the terms of his release to Home Confinement. He was re-sentenced to 2 years incarceration at Level V, with credit for time previously served. Weber did not appeal from that sentence. In April 2009 and again in June 2009, Weber moved to modify his sentence. On both occasions, the motion was denied by the Superior Court and no appeal was taken.

(4) In this appeal from the Superior Court's denial of his latest motion for sentence modification, Weber claims that his sentence should be

¹ Supr. Ct. R. 25(a).

reduced because a) he has been rehabilitated; and b) the judge exceeded the SENTAC guidelines and failed to state his reasons for doing so.

(5) Under Rule 35(b), the Superior Court “will not consider repetitive requests for reduction of sentence.” The Superior Court correctly relied upon this rule in denying Weber’s motion. Moreover, contrary to Weber’s contention, his record of rehabilitation does not constitute such “extraordinary circumstances” as would justify consideration of a modification motion filed more than 90 days after the imposition of sentence. Finally, even assuming that Weber’s claim regarding the SENTAC guidelines was presented to the Superior Court in the first instance,² it is settled law that the imposition of a sentence that exceeds the guidelines provides no basis for appeal³ and, furthermore, the judge’s failure to state his reasons for departing from the guidelines provides no basis for challenging a sentence.⁴

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

² The State argues that this issue was raised for the first time in this appeal.

³ *Gaines v. State*, 571 A.2d 765, 766-67 (Del. 1990).

⁴ *Mayes v. State*, 604 A.2d 839, 846 (Del. 1992).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice